IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.11.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT PETITION NO.13320 OF 2004
AND WPMP.NO.15593 OF 2004

..

K. Krishnamurthy .. Petitioner

vs.

1. The Secretary
Housing and Urban Development
(U.D.V.) Department
Government of Tamil Nadu
Fort St. George
Chennai 9.

2.The Commissioner
Corporation of Chennai
Rippon Buildings, Chennai 600 003.

3.The Member Secretary
Chennai Metropolitan Development Authority
Gandhi Irwin Road
Egmore, Chennai 8. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari as stated therein.

For petitioner : Mr. M. Venkatachalapathy, Sr. Counsel
Mr. M. Sriram

For respondents: Mr. A. Edwin Prabhakar, G.A. for R.1
Mr. A. Mohammed Ghouse for R.2
Mr. J. Ravindran for R.3

..

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

ORDER

(Order of the Court was made by P. Sathasivam,J.)

Aggrieved by the proceedings of the first respondent dated 01.04.2004 made in G.O.(D) No.151 Housing and Urban Development (UD5) Department, the petitioner has filed the above writ petition to quash the same on various grounds.

2. According to the petitioner, he is a promoter and joined with one Krishnammal, he constructed a dwelling unit in Old Door No.11, Krishnapuram Street, Royapettah, Chennai 600 014. He originally applied for planning permission on 30.01.1989 to put up construction of residential building consisting of ground plus two floors and the third respondent granted planning permission on 17.05.1989, and he successfully completed the construction. Thereafter, he applied for permission for the construction of third floor of a limited extent, to the second respondent on 23.03.1990 and he was under the bona fide impression that his request for additional construction of third floor had been fully approved by the authority concerned, in view of the fact that he did not receive any order rejecting his request. However, the third respondent by proceedings dated 18.07.1990, rejected the planning permission application after four months. Aggrieved by the same, the petitioner filed an appeal before the first respondent on 30.08.1990 bringing to the notice of the appellate authority the necessary permission given to several constructions in the same street and particularly in respect of adjacent properties. The first respondent without considering his objections and grounds raised, dismissed the appeal on 31.01.1996. Questioning the same, the petitioner filed W.P.No.6130 of 1996. By order dated 29.08.1998, holding that the violations pointed out by the third respondent are negligible, this court allowed the writ petition and remitted the matter to the first respondent for fresh disposal according to law. Thereafter, the first respondent dismissed the petitioner's appeal. In such circumstances, having no other remedy, the petitioner filed the present writ petition.

3. Heard the learned senior counsel for the petitioner and the learned counsel for the respondents.

4. The learned senior counsel for the petitioner by drawing our attention to the facts and figures mentioned in the proceedings of the third respondent submitted that violations even if any are minimal/negligible and the first respondent ought to have accepted the explanation of the petitioner. He also submitted that in view of the fact that the first respondent approved and regularized several constructions in the same street, ought to have accepted the claim of the petitioner. On the other hand, learned counsel for the third

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

respondent submitted that the violations are not negligible or minimal, but the petitioner constructed third floor without a valid sanctioned plan.

5. We verified the original order passed by the third respondent and the impugned order of the first respondent. As rightly pointed out, the violations are minimal or negligible. However, the fact remains that the third floor was constructed without prior approval or sanctioned plan from the competent authority. In such circumstances, the order passed by the first respondent cannot be faulted with.

6. During the course of hearing, the petitioner has filed an affidavit dated 26.10.2006, wherein the petitioner has referred to the order of First Bench of this Court in W.P.No.18898 of 2000 etc. dated 23.08.2006. According to the petitioner, the construction was completed as early as in the year 1990 and planning permission was obtained on 17.05.1989 for construction of ground plus two floors. The subject matter of writ petition relates to violation with regard to construction of third floor. In the additional affidavit, the petitioner once again mentioned that the violations pointed out by the third respondent are minimal/negligible. In the same affidavit, after pointing out the width of the road and the directions contained in the order of the First Bench referred to above, the petitioner seeks appropriate direction from this Court to the authorities concerned for sanction and approval of the construction made by him nearly 16 years ago. He also pleaded that the construction of first and second floors was authorized and in accordance with the approved plan. It is also pointed out in the additional affidavit that the Government has already granted sanction in respect of more than 14 cases in appeal. In those circumstances, the petitioner seeks direction of this Court to the Government for passing fresh order.

7. We considered the details furnished in the additional affidavit dated 27.10.2006. We have already observed that the impugned order cannot be faulted with. However, taking note of the grievance expressed by the petitioner and considering the assertion that the defects pointed out are negligible and also of the fact that the claim of the petitioner that the Government granted sanction in respect of more than 14 cases in appeal, while confirming the impugned order of the first respondent, we permit the petitioner to make a fresh representation enclosing all the materials to the first respondent within a period of two weeks from the date of receipt of copy of this order. If any such representation is made, the first respondent is directed to consider and dispose of the same on merits in accordance with law within a period of 12 weeks thereafter.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

With the above direction, this petition is dismissed. No costs. Consequently, connected WPMP., is closed.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary
   Housing and Urban Development
   (U.D.V.) Department
   Government of Tamil Nadu
   Fort St. George, Chennai 9.
2.The Commissioner
  Corporation of Chennai
  Rippon Buildings, Chennai 600 003.
3.The Member Secretary
  Chennai Metropolitan Development Authority
  Gandhi Irwin Road
  Egmore, Chennai 8.
1 cc to Mr.M.Sriram, Advocate, SR.56618
1 cc to Mr.A.Mohammed Gouse, Advocate, SR.56429

ggk (co)

dv/13.12.06

W.P.No.13320 of 2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/